IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

1. Harsh Vardhan Kejriwal Vs. 1. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

2.Tara Chand Agarwal

3.Smt. Indu Goyal

4 Col. Rajendra Singh

5.Jai Chamunda Grah Nirman Samiti Ltd.

(S.B. Civil Regular First Appeal No.87/1997)

2. Nirmal Kumar Khaitan Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.84/1997)

3. Ashok Kumar Bhatia Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.85/1997)

4. Prabha Pant Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.86/1997)

5. Ravi Kant Modi Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.88/1997)

6. Smt. Rajni Bhatia Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.89/1997)

7. Govind Prasad Bhartia Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.90/1997)

8. Smt. Parmeshwari Devi Bhartia Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.91/1997)

9. Smt. Namita Sarkhel Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.92/1997)

10. Smt. Geeta Devi Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.94/1997)

11. Satya Narain Khaitan Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.95/1997)

12. Smt. Sushila Devi Chhawachharia Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.96/1997)

13. Smt. Veena Kejriwal Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.97/1997)

14. Smt. Kamla Devi Agarwal Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.98/1997)

15. Smt. Rajyashri Khandelwal Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.99/1997)

16. Harsh Vardhan Kejriwal Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.100/1997)

17. Pradeep Pant Vs. Madhav Nagar Grah Nirman Sahkari Samiti Ltd.& ors.

(S.B. Civil Regular First Appeal No.101/1997)

Date of Judgment :: March 23, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Sudhanshu Kasliwal for the appellants-plaintiffs.
Mr. Alok Sharma for the respondents-defendants.

REPORTABLE **BY THE COURT**:

1. This batch of appeals filed U/s.96 CPC is directed against a common order of learned ADJ No.4, Jaipur City, Jaipur allowing the application of defendants under Order 7 Rule 11 CPC and rejecting the suits filed by the plaintiff appellants.

2. Though the matter came up for orders on application under Order 1 Rule 10 CPC seeking to implead one Shri Laxmi Narain Sharma as party defendant in the suit, however, with the consent of the parties, arguments for final disposal of these appeals were heard at the admission stage since these appeals are of 1997 and they are being disposed of by this common judgment.

3. The short but interesting question which arises in these cases is as to whether the suit filed by the plaintiff for declaration, delivery of possession and grant of permanent injunction against defendant Nos.1 to 5 including defendant No.1 Madhav Nagar Grah Nirman

Sahakari Samiti Ltd., the cooperative society registered under the provisions of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as 'the Act') was a suit barred by the bar of jurisdiction of the civil or revenue courts contained in Section 137 of the said Act.

4. The facts of leading case Harsh Vardhan Kejriwal (S.B. Civil Regular First Appeal No.87/1997) are noticed.

5. According to the plaintiff such civil suit for declaration, possession and grant of permanent injunction was filed against the defendants claiming that a partnership firm called M/s. Durga Tea Center entered into an agreement to purchase an agricultural land bearing khasra Nos.107, 109 and 111 admeasuring 3.33 acres out of the total area of 30 acres from the defendant No.4 Col. Rajendra Singh son of Dalpat Singh vide an agreement of sale on 25.4.1975 but since Col. Rajendra Singh failed to comply with the said agreement a civil suit for specific performance was filed by M/s. Durga Tea Center and in pursuance of the decree a sale deed was executed on 16.12.1978 in favour of one Smt. Krishna Kejriwal as a nominee of M/s. Durga Tea Center. The possession of the aforesaid land was handed over by Col. Rajendra Singh to Smt. Krishna Kejriwal. Soonafter the execution of the aforesaid agreement of sale dated 28.4.1975 and Smt. Krishna Kejriwal as a nominee/ representative of M/s. Durga Tea Center entered into an agreement to sell with defendant No.5 Jai Chamunda Grah Nirman Sahakari Samiti Ltd., another co-operative society and physical possession of the said land was delivered to defendant No.5 co-operative society on 20.10.1981 which prepared a housing development scheme named as 'Krishna Nagar' comprising of 26 plots. The said plots were allotted to different persons and possession was also

handed over to the respective allottees. Thereafter plaintiff deposited conversion charges of the said plots with the State Government. The defendant No.5 co-operative society also submitted a site plan of the aforesaid colony in accordance with law with the Jaipur Development Authority and the Jaipur Development Authority approved the sub-division of the aforesaid land and the lay out plan on 11.7.1984 and as per the law applicable the open area meant for roads and facilities and the said land stood vested in JDA. According to plaintiffs since most of the plaintiffs resided in Calcutta, they appointed Mr. Sanwar Mal Agarwal, Chartered Accountant as their power of attorney holder to look after the aforesaid plots of the plaintiffs. It is further the case of the plaintiff that defendant No.1 co-operative society headed by one Shri Pooran Chand Kumawat in collusion with anti social elements and concerned Police Station House Officers raised boundary wall surrounding the land of Krishna Nagar Extension Residential Scheme and the said construction of boundary wall was completed by use of force on 13.9.1992. The defendant No.1 co-operative society thus encroached upon the aforesaid plots and though a first information report was lodged at Police Station Vaishali Nagar on 12.9.1992 but nothing happened on account of collusion. Thereafter the said aforesaid suit was filed which was dismissed upon an application under Order 7 Rule 11 CPC. Hence these appeals.

6. For deciding the short question as to whether the bar of jurisdiction of civil or revenue court under the Act of 1965 applies in the present case or not, two provisions of the said Act are required to be noticed. Section 137 providing for bar of jurisdiction of courts reads as under:-

> **"137. Bar of jurisdiction of courts**. (1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of, -
>
> (a) the registration of a co-operative society or of an amendment of a bye-law;
>
> (b) the removal of a committee;
>
> (c) any dispute required under section 75 to be referred to the Registrar; and
>
> (d)any matter concerning the winding up and the dissolution of a co-operative society.
>
> (2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.
>
> (3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever."

7. Section 75 of the Act in Chapter IX of the Act relates to nature of disputes falling within the jurisdiction of the arbitrator under the Act is also reproduced hereunder for ready reference:-

> **"75. Disputes which may be referred to arbitration**. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute **touching the constitution, management, or the business of a co-operative society** arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society, or

© between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society, or

(d) between the society and any other co-operative society,

(e) between the society and the surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society or with whom the society has or had transaction under section 66, whether such a surety is or is not a member of a society,

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or

> legal representatives of a deceased member, whether such debt or demand be admitted or not;
>
> (b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;
>
> © any dispute arising in connection with the election of any officer of the society.
>
> (3)If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

8. Mr. Sudhanshu Kasliwal, learned counsel appearing for the appellants urged that the nature of disputes, claim in the civil suits and relief sought from the civil court by filing the civil suits in the present cases, could not fall within the domain of Section 75 of the Act by any stretch of imagination because such disputes do not pertain to constitution, management or business of a co-operative society. He relied upon a judgment of Madhya Pradesh High Court in case of **Madhyam Vargiya Grih Nirman Sahakari Sanstha Vs. Vasantrao & anr**. [AIR 1988 Madhya Pradesh 94]wherein the learned Single Judge of MP High Court held that where a co-operative housing society had sold a plot to its member and the member in turn sold it to another person in violation of terms and conditions of the sale deed executed by the co-operative society in favour of the member and, consequently, the society filed a suit against both of

them with a prayer for cancellation of sale deed executed by the member and for removal of construction made by another person, it could not be said plaint averments raised a question only touching the business of the society within the meaning of Section 64 of the M.P. Co-operative Societies Act. Consequently, the civil court could not return the plaint under Order 7 Rule 11(d) of CPC.

Learned counsel further relied upon the judgment in case of **Vimal Co-operative Housing Society Ltd. Vs. Rajendrakumar Shankerbhai Bhagiya** [(2003) 2 GLR 1066], wherein the Gujarat High Court held as under:-

> "The expression "touching" mentioned in Section 167 of the Gujarat Cooperative Societies Act would mean "concerning". The expression "business" mentioned in the said Section could be interpreted to mean the "actual trading or commercial or other similar business activity" of the society. This is with reference to the object of the society and the society through by-laws is authorised to enter into such activity. In the matter of Co-operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, A.P., Hyderabad, as reported in AIR 1970 SC 245. The Apex Court had occasion to deal with the issue. It is clear from the above decision of the Apex Court that the Court is required to ascertain from the facts of each case as to whether or not the dispute raised is "touching to the business" of the society in the light of the facts of each case. The main object and authorisation of the society to entertain certain activity will have to be kept in mind. Therefore, whether a dispute is "touching to the business of the society" is mixed question of law and fact. At times by mere statement made in the plaint, Court may come to the conclusion that

> dispute is covered by Section 167 of the Gujarat Co-operative Societies Act, 1961. When Court comes to the conclusion, from the statements of plaint, then the stage of rejection of plaint is provided by Order 7 Rule 11 (D) of the Civil Procedure Code. But, if the Court has to ascertain the facts of the case in respect of the statement made in the plaint, then Order 7 Rule 11(D) of the Civil Procedure Code is not the proper stage to reject the plaint."

Similarly, the Division Bench of Delhi High Court in case of **Sh. Ram Prasad Vs. Sh. Mohan Lal and Ors**.[131 (2006) DLT 322] held like this:

> "Nature of the dispute and relief claimed by a party would be the basis for determination of such a question. We have already referred to the prayer made by the plaintiff in the suit before the civil court. As far as the suit for declaration, giving claim of title where even indirectly question of nomination may arise, is stated to be pending between the parties as mentioned by the defendants in the application filed by them under Order 7 Rule 11 of the CPC. In the present case, the prayer simplicitor is that the suit be partitioned to the extent of 1/3rd share wherein the defendants may raise a defence of their being the exclusive owners and a suit for partition may be liable to be dismissed or may be decreed by the court, depending on the evidence led by the parties. But the court certainly could not dismiss the suit as being barred. The relief claimed in the plaint does not in any way fall within the ambit and scope of Section 60 of the Act."

9. Per contra, Mr. Alok Sharma, learned counsel appearing for the respondents emphasised that the terms "touching the constitution, management or the business of

the co-operative society" employed in Section 75 of the Act are wide enough and within its ambit the dispute of the nature referred in the present case is covered and Registrar alone was competent to decide such disputes and, therefore, the bar U/s.137 stood attracted and the learned trial court was perfectly justified in rejecting the plaints under Order 7 Rule 11 CPC. He further urged that sub-section (2) of Section 75 providing for certain disputes to be deemed to be touching the constitution, management or the business of a co-operative society, namely a claim relating to debt or demand due to the society, a claim by a surety against the principal debtor where society has recovered from the surety any amount and any dispute in connection with election of officer of any society are merely the enumerations by way of clarification to forceclose any dispute or debate as to these disputes falling within the domain of Registrar of Co-operative Societies,. In other words, he urged that sub-section (1) itself was the main provision defining the area of disputes which would so fall within four corners of Section 75. Particularly, he drew the attention of the Court towards clause (d) of Section 75 (1) of the Act, namely "between the society and any other co-operative society". He, therefore, submitted that this apparently being a case of dispute between the two co-operative societies raising their rival claim over the land in question, the dispute would fall for determination in accordance with Section 75 of the Act alone and civil or revenue courts had no jurisdiction to decide such disputes.

10. Having considered the rival submissions and after giving my thoughtful consideration to the respective arguments of the learned counsel, this Court is of the opinion that the present appeals deserve to be allowed and the learned trial court has fallen into error in

allowing the application under Order 7 Rule 11 CPC and rejecting the plaint as barred by law under Order 7 Rule 11 CPC. The reasons are as follows:-

11. The Rajasthan Co-operative Societies Act, 1965 has been enacted to consolidate and amend the law relating to co-operative societies in the State of Rajasthan. The run through the index and Chapter headings of the Act of 1965 would indicate that it was to regulate the working of the co-operative societies by making provisions for Registration in Chapter II, management and privileges of co-operative societies,in Chapter III, IV and V, Chapter VI providing for State Aid to Co-operative Societies, Chapter VII providing for properties and funds of Co-operative societies, Chapter VIII dealt with audit, inquiry, inspection and surcharge, Chapter IX containing Section 75 to 77 dealt with settlement of disputes, Chapter X containing winding up and dissolution of Co-operative Societies, Chapter XI relating to Land Development Banks, Chapter XII enumerates provisions relating to execution of awards, decree, orders and decisions, Chapter XIII deals with appeals, revision and review, Chapter XIV deals with offences and penalties, Chapter XV contains miscellaneous application upto Section 153 of the Act.

12. Of course, one of the objectives by providing for bar of jurisdiction of civil or revenue courts in Section 137 was to avoid delays in litigation relating to co-operative societies and confer such powers on the Registrar/ Arbitration Tribunal under the Act with powers of civil courts conferred upon them by Section 135 of the Act, yet it is very clear that for determination of disputes relating to civil rights like title, possession dispute as to agreement of sale etc., the jurisdiction of civil or revenue courts was neither envisaged to be

curtailed nor in fact has so been curtailed or barred. The wholesome reading of Section 75 would indicate that it is the dispute between the members inter-se or members and the society or between two or more societies **relating to their working as co-operative society alone** in accordance with law including its bye laws and not in an illegal or unlawful manner like encroachments or other illegal possession etc., which is sought to be excluded from the jurisdiction of the civil or revenue courts and not where intricate question of fact and law relating to title, possession, and contractual obligations are called in question for which civil courts alone have the jurisdiction under the provisions of Section 9 of the CPC along with other relevant provisions providing for trying such civil suits by the civil courts in CPC. If the land in question in agricultural in nature it is the revenue courts which will have the jurisdiction. The words “dispute touching the business of a co-operative society” cannot expand the jurisdiction of Registrar or Tribunal under this Act beyond parameters of the Act itself and a Registrar of the Co-operative Society does not have full fledged powers of a civil court to take and weigh relevant evidences on different sides and make a judicial pronouncement upon them. The Act, in the opinion of this Court, only meant that if dispute arises about the working of the co-operative societies relating to their constitution, management and business as a co-operative society arises even between two or more co-operative societies inter-se or between society on one hand and members on the other side or inter-se members, the Registrar of the Co-operative Societies may deal with such disputes and approaching of civil court or revenue courts in such matters is avoided to make this Act a self contained code for dealing with the co-operative society registered under the Act. The judgment cited above of M.P. High Court, Gujarat and Delhi High Court fully

support the case of appellants and are applicable in the present cases.

13. While there is no dispute that there are two co-operative societies involved in the case and they happen to be in the array of defendants in the suit filed but their rival claims over the land in question is not of a nature which is covered within the ambit and scope of Section 75 of the Act. Here plaintiffs have come with a case that the defendant co-operative society or some other third party has encroached upon the land illegally and are sitting over with sheer use of force, though illegally, and they are required to file the civil suit for seeking appropriate relief from the court, therefore, it cannot be said that dispute raised by such plaintiffs is of a nature which should be decided by the Registrar of Co-operative Societies in accordance with the provisions of the Act of 1965.

14. Consequently, all these appeals are allowed. The impugned judgment and order of learned trial court allowing Order 7 Rule 11 applications is set aside and the respective civil suits are restored back to the learned trial court for deciding the civil suits in accordance with law. The learned trial court shall also consider and decide the application under Order 1 Rule 10 CPC on its own merit in accordance with law.

15. With these observations, all the appeals are allowed, with no order as to costs. A photo copy of this judgment be placed in all the files.

(**Dr. VINEET KOTHARI),J**.

VS/